

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of }
BRUCE H. AND NORAH E. PLANCK }

For Appellants: Bruce H. Planck, in pro. per.

For Respondent: Bruce W. Walker
Chief Counsel

John A. Stilwell, Jr.
Counsel

O P I N I O N

This appeal is made pursuant to section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Bruce H. and **Norah** E. Planck against a proposed assessment of additional personal income tax in the amount of \$146.02, plus interest in the amount of \$16.59, for the year 1973. Simultaneously with the filing of this appeal, appellants paid the proposed assessment of tax and interest in full. Accordingly, pursuant to section 19061.1 of the Revenue and Taxation Code, the appeal will be treated as an appeal from the denial of a claim for refund.

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Qualified taxpayers under the California Personal Income Tax Law were entitled to a special tax credit for the taxable year 1973 (Rev. & Tax. Code, § 17069). The allowable credit was to be computed on page 2, Part VI, of Form 540 (1973), and the amount of that credit then entered on page 1, line 24, of the return. In preparing their 1973 return, appellants computed their special tax credit (\$182.25) in the space **provided**; they then erroneously entered that amount on line 22 ("**Other credits**") , leaving line 24 ("**Special tax credit**") blank.

Upon preliminary examination of appellants' 1973 return, respondent noted that line 24 was blank and assumed that appellants had neglected to claim their special tax credit. Accordingly, respondent computed the allowable tax credit, treating the \$182.25 as an "**other credit**," and mailed appellants a refund check in the **amount** of \$146.81 (\$144.76, the special **tax credit** as computed by respondent, plus interest.) ^{1/} In a subsequent audit of their 1973 return, respondent discovered appellants' original computation of the special tax credit and realized it had erred in issuing a refund. In order to correct the credit duplication, **respondent** issued the proposed deficiency assessment involved herein.

Appellants appear to concede that they received an erroneous refund of personal income tax for the taxable year 1973 and they therefore do not contest the **corrective deficiency** assessment in the amount of \$146.02. ^{2/} Their dispute lies with respondent's assessment of interest on the amount of the **erroneous** refund from the date that refund was made. The propriety of that interest assessment in the amount of \$16.59 is the sole issue of this appeal,

1/ Respondent's treatment of the \$182.25 as an "other credit" resulted in a reduction in the "adjusted net tax" figure and a corresponding reduction in the special tax credit computed by respondent.

2/ There is nothing in the record to explain the discrepancy between the amount of the deficiency assessment and the **amount** of the erroneous refund.

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Appellants are of the opinion that the erroneous refund made by respondent was the result of "an irresponsible and inadequate review" of their 1973 return, since they had properly computed their special tax credit in the space designated for that computation on page 2 of the return. They contend that under the circumstances they should not be required to pay interest on the amount erroneously refunded to them. In this regard they urge the impropriety of an interest assessment under section 18688 of the Revenue and Taxation Code, dealing with interest on deficiency assessments. Appellants contend they had paid their entire tax liability and there was therefore no tax deficiency. They are also concerned with being assessed interest over what they consider the excessive amount of time it took respondent to find and correct its error.

Respondent agrees with appellants that the assessment here in question is not a deficiency and thus is not properly subject to the interest imposed under section 18688 of the Revenue and Taxation Code. Respondent nevertheless contends that interest is due on the amount of the erroneous refund from the date the refund was made under section 19111 of the Revenue and Taxation Code. We agree with respondent that interest on the erroneous refund is due. For the reasons hereafter stated, however, we do not agree that the authority for imposing such interest is to be found in section 19111.

In 1971 the Legislature added section 18591.1 to the Revenue and Taxation Code (Stats. 1971, 1st Ex. Sess., ch. 1, p. 5015). That provision, patterned after section 6211 of the Internal Revenue Code of 1954, defines the term "deficiency" for purposes of the Personal Income Tax Law. We have determined that an erroneous refund constitutes a "deficiency," within the meaning of section 18591.1. (See Appeal of Audrey C. Jaegle, Cal. St. Bd. of Equal., June 22, 1976.) That being so, interest on the deficiency is properly imposed under section 18688 of the Revenue and Taxation Code, which provides that interest on a deficiency "shall be assessed, collected and paid in the same manner as the tax"^{3/}

^{3/} In Appeal of Albert A. Ellis, Jr., decided by this board November 14, 1972, we held that that portion of a deficiency assessment which resulted from an erroneous

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With respect to appellants' contention ~~that~~ interest should be ~~cancelled~~ in this case, since they did ~~not~~ request the erroneous refund sent to them by respondent, we can only reiterate that the payment of interest on an assessed deficiency is mandatory under the clear language of section 18688, ~~regardless~~ of the reason for the assessment. (Appeal of Audrey C. Jaegle, supra; Appeal of Amy M. Yamachi, Cal. St. Bd. of Equal., June 28, 1977; -Appeal of Allan W. Shapiro, Cal. St. Bd. of Equal.; Aug. 1, 1974.) Interest is not a penalty ~~imposed~~ on the taxpayer but compensation for the use of the money. (Ross v. United States, 148 F. Supp. 330 (D. Mass. 1957.)) Since ~~appellants in the~~ instant case had the ~~use~~ of the money from the time of the erroneous refund to the date they paid the ~~corrective~~ deficiency assessment, interest accruing ~~during~~ that ~~period was~~ properly assessed against them.'

While we sympathize with appellants' position, we have no ~~alternative~~ but to sustain respondent's action in this matter.

3/ (continued)

credit was not a "deficiency" and was therefore not ~~sub-~~ject to the imposition of interest under ~~section~~ 18688 of the Revenue and ~~Taxation~~ Code. We there ~~determined~~ that interest on the amount of the erroneous credit could ~~nevertheless~~ be imposed under section 19111, which provides for the recovery by respondent of an ~~erroneous~~ refund or credit, plus interest, in a court action. In Ellis we were dealing with a taxable year prior to the ~~enactment~~ of section 18591.1, which defines "deficiency." Under the circumstances, we believe our opinion in Ellis is now of doubtful validity on this point.


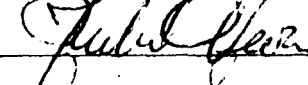
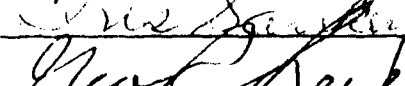
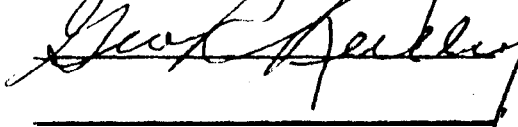
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O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claim of Bruce H. and Norah E. Planck for refund of personal income tax in the amount of \$146.02, plus interest in the amount of \$16.59, for the year 1973, be and the same is hereby sustained.

Done at Sacramento, California, this 16th day of August , 1977, by the State Board of Equalization.

 Chairman
 Member
 Member
 Member
_____ Member